attachment, *Thomson* v. *Tilden, supra,* and citing *Gribbon* v. *Freel, supra,* with approval, held that a summons which failed to state the county in which trial was desired was good enough to defeat a motion to vacate the warrant where lack of jurisdiction was claimed.

TORTS—OPERATION OF RAILROADS—PROXIMATE CAUSE.—The defendant's train crew saw a fire on one side of the track, and fire engines approaching from the other side, but nevertheless proceeded on with the train and blocked the crossings, though it would have been practicable for them to have stopped and left the way clear. The property owner sued for damage due to the consequent delay. *Held,* one judge dissenting, it was error to dismiss the complaint, *Globe Malleable Iron & Steel Co.* v. *New York Cent. & H. R. R. R.* (N. Y. 1919) 124 N. E. 109.

It is well settled that though a railroad does not start the fire, yet the delay caused by its conduct may be the proximate cause of the increased damage. *Erickson* v. *Great Northern Ry.* (1912) 117 Minn. 348, 135 N. W. 1129; *Phenix Insurance Co.* v. *New York Central & H. R. R. R.* (1907) 122 App. Div. 113, 106 N. Y. Supp. 696, *aff'd* (1909) 196 N. Y. 554, 90 N. E. 1164; *Houren* v. *Chicago etc. Ry.* (1908) 236 Ill. 620, 86 N. E. 611, whether that conduct is active, *Metallic Compression Casting Co.* v. *Fitchburg R. R.* (1872) 109 Mass. 277, or passive. *Houren* v. *Chicago etc. Ry., supra; contra, Louisville & Nashville R. R.* v. *Scruggs & Echols* (1909) 161 Ala. 97, 49 So. 399. It is also established that in cases like the instant one the public safety is paramount to the right of the defendant to use its property in an otherwise lawful manner, *Metallic Compression Casting Co.* v. *Fitchburg R. R., supra,* and that the question of proximate cause and of negligence should properly be left to the jury. *Cf. Milwaukee & St. Paul Ry.* v. *Kellogg* (1876) 94 U. S. 469; see *Cleveland etc. Ry.* v. *Tauer* (1911) 176 Ind. 621, 96 N. E. 758.

WATERS AND WATER-COURSES—RIPARIAN OWNER—NATURE OF RIGHT.—The City of New York, by damming up Esopus Creek, in order to acquire more water for the Ashokan Reservoir, dried up the creek below the dam so as permanently to deprive the claimant, a lower riparian owner, of his natural right to have the water flow past his land substantially undiminished. *Semble,* this is a corporeal right. *Van Etten* v. *City of New York* (N. Y. 1919) 124 N. E. 201.

It must be admitted that, strictly speaking, all rights are incorporeal, in the sense that they have no physical existence. But the common-law lawyers made the distinction between corporeal and incorporeal rights and it is interesting to determine what was the line of their distinction. Blackstone states in his Commentaries, 2 Bl. Comm. *20, that "corporeal hereditaments are the substance, which may be always seen, always handled: incorporeal hereditaments are but a sort of accidents, which inhere in and are supported by that substance." But, says Digby, Real Property (5th ed.) 306 n. 2, "The names 'corporeal and incorporeal' are most unfortunate, because if by

'corporeal' is meant 'relating to land' then a large class of incorporeal hereditaments are also entitled to the name." *Cf.* 2 Austin, Jurisprudence (3rd ed.) 707, 708. Surely a profit *a prendre* in fee relates to land as much as a term for years. It has also been said that "corporeal rights lie in livery; incorporeal in grant." Co. Lit. *9a. But this distinction no longer exists to-day. 8 and 9 Vict. c. 106; N. Y. Consol. Laws c. 50 (Laws of 1909 c. 52) §241. When we consider that a so-called property right is after all but an aggregate of rights and other legal relations, *Wynehamer* v. *People* (1856) 13 N. Y. 378, 396, perhaps the distinction most probably in the minds of the older lawyers was that the holder of a larger aggregate of rights and powers relating to a corporeal object was to be regarded as having a corporeal right, whereas the holder of merely minor or particular rights relating thereto was to be regarded as having an incorporeal right. Under this classification it can be seen why easements are incorporeal; terms for years corporeal. The holder of an easement has but a particular interest in the land, a limited right of user, hence incorporeal. The holder of a term has extensive rights in the land, limited only by the length of the term and the rights of the remainderman, hence corporeal. If this classification is valid, the principal case seems to be wrong in regarding the natural right of flow as corporeal. See *Hewlins* v. *Shippam* (1826) 5 B. & C. 221, 229. The riparian owner does not own the water. *Miner* v. *Gilmour* (1858) 12 Moo. P. C. 131, 156; *Embrey* v. *Owen* (1851) 6 Ex. *353. He has merely the right to reasonable user. *McCartney* v. *Londonderry Co.* [1904] A. C. 301; see *Mason* v. *Hill* (1833) 5 B. & Ad. 1, 19. The dictum in the principal case is, however, law in New York. *Scriver* v. *Smith* (1885) 100 N. Y. 471, 3 N. E. 675.

WITNESSES—COMPETENCY—HUSBAND AND WIFE.—The defendant in a criminal prosecution for violating the liquor laws offered her husband as a witness in her behalf. *Held,* one judge dissenting, the husband was not a competent witness. *Adams* v. *United States* (C. C. A., 8th Cir. 1919) 259 Fed. 214.

Because of the desire of the courts not to permit anything that might tend to disrupt the marital relation, the common law has declared either spouse incompetent to testify against the other; *State* v. *Vaughan* (1909) 136 Mo. App. 645, 118 S. W. 1186; 6 Columbia Law Rev. 469; or in behalf of the other, because of the identify of interest and likelihood of bias. *Turner* v. *State* (1916) 15 Ala. App. 19, 72 So. 574; *State* v. *Smith and Bird* (1904) 21 Del. 1, 57 Atl. 368; see *Kraimer* v. *State* (1903) 117 Wis. 350, 352, 93 N. W. 1097. An exception to this rule of incompetency is made where either spouse is accused of a crime against the other's person, since usually in such a case only the husband and wife have any knowledge of the happening. 5 Chamberlayne, Evidence §3659; *Clarke* v. *State* (1898) 117 Ala. 1, 23 So. 671; *Whipp* v. *State* (1877) 34 Ohio St. 87. The general common law rule has now been abrogated in many jurisdictions by statute, 1 Wigmore, Evidence §602, both in civil actions, N. Y. Code Civ. Proc. §828, and in criminal cases. Penal Law, N.